

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**

**PRINCIPAL BENCH**

**CP-659/2016**

**IN THE MATTER OF:**

SBJ Exports & Mfg. Pvt. Ltd.

.... Applicant/petitioner

Vs.

BCC Fuba India Limited

.... Respondent

**Order under Section 433(e), 434 & 439 of the Companies Act**

**Order delivered on 07.06.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**

**Hon'ble President**

**Sh. S. K. MOHAPATRA,**

**Hon'ble Member (Technical)**

**PRESENTS:**

For the RP:

Mr. Abhishek Anand and Mr. Anant A. Pavgi, Advocates

**ORDER**

During the course of hearing we have been apprised that the last meeting of the CoC took place on 05.02.2018 and the resolution was adopted for liquidation of the Corporate Debtor namely SBJ Exports and Manufacturing Private Limited. The period of 180 days for the CIR process came to an end on 12.02.2018. It is pertinent to mention that in the voting both the Financial Creditors namely Axis Bank and Oriental Bank of Commerce expressed the opinion in favour of liquidation of the Corporate Debtor but kept it subject to the approval of Competent Authority. The approval by the Oriental Bank of Commerce representing 35.59% of vote sharing came on 07.02.2018 whereas the approval by the Axis Bank representing 64.41% could be communicated only on 16.02.2018. The CIR process period of 180 days had expired on 12.02.2018. An unenviable situation has been created by the conduct of the Members of the CoC. Despite the fact that the Resolution Professional apprised the CoC that the period of 180 days is to expire on 12.02.2018 and sanction be granted for moving an application before the Adjudicating Authority for extension of the



period. The CoC has behaved the way we have recorded in the preceding paras.

A strange phenomena has developed in so far as the functioning of CoC is concerned. In a number of cases it has now been seen that Members of the CoC are nominated by Financial Creditors like Banks without conferring upon them the authority to take decision on the spot which acts as a block in the time bound process contemplated by the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'). Such like speed breakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIR process. In the case of ***M/s. Innoventive Industries Ltd. v. ICICI Bank and Ors.***, (2018) 1 SCC 407 Hon'ble the Supreme Court has observed that speed is the essence of the Code and in view thereof such conduct is highly depreciable. In the present case neither there is any authorization to the Resolution Professional by the CoC to seek extension of the CIR process period beyond 180 days nor the vote sharing has been exercised by the last date of completion of period of 180 days.

In view of the above we direct the Resolution Professional to bring this order to the notice of the CoC so that appropriate steps be taken. A copy of this order be sent to the Insolvency and Bankruptcy Board of India for taking suitable action in respect of the conduct of the Members of CoC in the present matter as well as in the day to day functioning of the Members of CoC generally speaking.

List for further consideration on 10.07.2018.

— Sd —

(M.M.KUMAR)  
PRESIDENT

— Sd —

(S. K. MOHAPATRA)  
MEMBER (TECHNICAL)